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11 UNITED STATES DISTRICT COURT

12 C NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

13 ANGELA GARCIA, individually,
 14 and on behalf of other members of
 the general public similarly situated,

15 Plaintiff,

16 vs.

17 CITIGROUP INC., a Delaware
 18 corporation; CITIBANK, N.A., a
 national association; and Does 1
 19 through 10,

20 Defendants.

CV 11 - 0692 PSG

CLASS ACTION COMPLAINT &
 ENFORCEMENT UNDER THE
 PRIVATE ATTORNEYS GENERAL
 ACT, CALIFORNIA LABOR CODE
 §§ 2698 ET SEQ.

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code § 226(a) (Non-compliant Wage Statements);
- (4) Violation of California Labor Code §§ 2800 and 2802 (Unpaid Business Expenses);
- (5) Violation of Labor Code §§ 1197 and 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 4(C) (Failure to Compensate for Split-Shifts);
- (6) Violation of Labor Code §§ 2698 et seq. (“PAGA”); and
- (7) Violation of California Business & Professions Code §§ 17200 et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff Angela Garcia ("Plaintiff"), individually and on behalf of all
2 other members of the public similarly situated, alleges as follows:

3 **JURISDICTION AND VENUE**

4 **1. Jurisdiction**

5 The above-entitled Court has jurisdiction over this class action pursuant to
6 the Class Action Fairness Act of 2005, codified at 28 U.S.C. § 1332(d), because
7 the number of prospective class members is believed to be over 100, the total
8 amount in controversy for this class action exceeds \$5 million and there exists
9 minimal diversity of citizenship among the parties. Specifically, at the time this
10 action was commenced, the Plaintiff was a resident and citizen of the State of
11 California. At the time this action was commenced, Defendants CITIGROUP
12 INC. and CITIBANK, N.A., were citizens of Delaware and New York.

13 **2. Intradistrict Assignment and Venue**

14 Venue is proper in this Court because Defendants do substantial business
15 in the State of California, County of Santa Clara. Defendants CITIGROUP INC.
16 and CITIBANK, N.A., have bank branch locations in Santa Clara County,
17 California. Venue is also proper because Defendants' corporate policies were
18 applied and executed in Santa Clara County, California. Therefore, the proper
19 intradistrict assignment is the San Jose Division per Civil Local Rules 3-2(c) and
20 (e).

21 **3. California Labor Code sections 2699 et seq., the "Labor Code
22 Private Attorneys General Act" ("PAGA"), authorizes aggrieved employees to
23 sue directly for various civil penalties under the California Labor Code.**

24 **4. Plaintiff timely provided notice on February 14, 2011 to the
25 California Labor and Workforce Development Agency ("LWDA") and to
26 Defendant, pursuant to California Labor Code section 2699.3(a).**

27 **THE PARTIES**

28 **5. Plaintiff Angela Garcia is, and at all relevant times was, a competent**

1 adult residing in California. Plaintiff brings this suit on behalf of herself and all
2 similarly situated individuals pursuant to Federal Rules of Civil Procedure 23
3 and California Business & Professions Code section 17200 *et seq.*

4 6. Defendant CITIGROUP INC. was and is, upon information and
5 belief, a Delaware corporation. At all times hereinafter mentioned, Defendant
6 CITIGROUP INC. was an employer whose employees are engaged throughout
7 this county, the State of California and the various states of the United States of
8 America. CITIGROUP INC. and owns and operates numerous office locations
9 throughout the State of California. CITIGROUP INC.'s principal place of
10 business is located in New York.

11 7. Defendant CITIBANK, N.A. was and is, upon information and
12 belief, a National Association incorporated in the State of Delaware. At all times
13 hereinafter mentioned, Defendant CITIBANK, N.A. was an employer whose
14 employees are engaged throughout this county, the State of California and the
15 various states of the United States of America. CITIBANK, N.A. and owns and
16 operates numerous office locations throughout the State of California.
17 CITIBANK, N.A.'s principal place of business is located in New York.

18 8. Plaintiff is unaware of the true names or capacities of the
19 Defendants sued herein under the fictitious names DOES 1 through 10, but prays
20 for leave to amend and serve such fictitiously named Defendants once their
21 names and capacities become known.

22 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1
23 through 10 are the partners, agents, owners, shareholders, managers or
24 employees of CITIGROUP INC. and/or CITIBANK, N.A.

25 10. Plaintiff is informed and believes, and thereon alleges, that each and
26 all of the acts and omissions alleged herein was performed by, or is attributable
27 to CITIGROUP INC., CITIBANK, N.A. and DOES 1 through 10 (collectively
28 "Defendants"), each acting as the agent for the other, with legal authority to act

1 on the other's behalf. The acts of any and all Defendants were in accordance
2 with, and represent, the official policy of Defendants.

3 11. At all relevant times, Defendants, and each of them, ratified each
4 and every act or omission complained of herein. At all relevant times,
5 Defendants, and each of them, aided and abetted the acts and omissions of each
6 and all the other Defendants in proximately causing the damages herein alleged.

7 12. Plaintiff is informed and believes, and thereon alleges, that each of
8 said Defendants are in some manner intentionally, negligently or otherwise
9 responsible for the acts, omissions, occurrences and transactions alleged herein.

10 CLASS ACTION ALLEGATIONS

11 13. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules
12 of Civil Procedure on her own behalf, as well as on behalf of each and all other
13 persons similarly situated, for claims alleged herein which arise under California
14 law.

15 14. This action is properly maintainable under Fed. R. Civ. Proc. Rule
16 23(b)(2) because injunctive and/or declaratory relief is the predominant relief
17 sought, and Defendants have acted or refused to act on grounds generally
18 applicable to the class, thereby making appropriate final injunctive relief or
19 corresponding declarative relief with respect to the class as a whole.

20 15. Plaintiff seeks relief authorized by California law, and thus, seeks
21 class certification under Federal Rules of Civil Procedure, Rule 23(b)(2) of the
22 following Class:

23 Injunctive Relief Class:

24 All currently employed non-exempt employees who work for
25 Defendants in California bank branches.

26 16. Plaintiff reserves the right to establish subclasses of the Injunctive
27 Relief Class as appropriate pursuant to Federal Rules of Civil Procedure, Rule
28 23(c)(5).

1 17. Defendants still maintain and administer policies and procedures
2 that govern the Injunctive Relief Class Members and create common questions
3 of law and fact, making class-wide injunctive relief appropriate, including:

- 4 (a) Whether Defendants policies and procedures violate
5 California's overtime laws as set forth in the applicable
6 Industrial Welfare Commission wage order and Labor Code
7 sections 510 and 1198;
- 8 (b) Whether Defendants policies and procedures violate
9 California's minimum wage laws as set forth in the applicable
10 Industrial Welfare Commission wage order and Labor Code
11 sections 1194, 1197, and 1197.1;
- 12 (c) Whether Defendants policies and procedures violate
13 California's meal period laws as set forth in the applicable
14 Industrial Welfare Commission wage order and Labor Code
15 sections 226.7 and 512;
- 16 (d) Whether Defendants policies and procedures violate
17 California's rest period laws as set forth in the applicable
18 Industrial Welfare Commission wage order and Labor Code
19 section 226.7;
- 20 (e) Whether Defendants policies and procedures violate
21 California's wage payment laws as set forth in the applicable
22 Industrial Welfare Commission wage order and Labor Code
23 section 204;
- 24 (f) Whether the wage statements that Defendants provide to
25 hourly employees violate California Labor Code 226(a);
- 26 (g) Whether Defendants have policies and procedures that fail or
27 refuse to reimburse Plaintiff and class members for necessary
28 business-related costs and expenses they incur; and

(h) Whether Defendants' policies and procedures fail to pay one hour of wages to employees who are required to work split-shifts.

18. Plaintiff also seeks relief authorized by California law, and thus, seeks class certification under Federal Rules of Civil Procedure, Rules 23(b)(1) and/or (3) of the following Class:

Damages and Penalties Class:

All non-exempt current and former employees who worked for Defendants in California bank branches within four years prior to the filing of this complaint until the date of certification.

19. Plaintiff reserves the right to establish subclasses of the Damages and Penalties Class as appropriate pursuant to Federal Rules of Civil Procedure, Rule 23(c)(5).

20. There are common questions of law and fact as to the Damages and Penalties Class Members that predominate over questions affecting only individual Members, including but not limited to:

- (a) Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- (b) Whether Defendants required Plaintiffs and class members to work over eight (8) hours per day, over twelve (12) hours per day, and/or over forty (40) hours per week and failed to pay legally required overtime compensation to Plaintiffs and class members;
- (c) Whether Defendants required Plaintiffs and class members to work hours which were not compensated with at least minimum wages;
- (d) Whether Defendants deprived Plaintiffs and class members of

meal periods or required Plaintiffs and class members to work during meal periods without compensation;

- (e) Whether Defendants deprived Plaintiffs and class members of rest periods or required Plaintiffs and class members to work during rest periods without compensation;
- (f) Whether Defendants failed to timely pay all wages due to Plaintiffs and class members during their employment;
- (g) Whether Defendants provided wage statements that contained all of the information required by California Labor Code 226(a);
- (h) Whether Defendants failed to reimburse Plaintiff and class members for necessary business-related costs and expenses they incurred;
- (i) Whether Defendants required Plaintiffs and class members to work split-shifts without compensating them with at least one hour of pay at the minimum wage;
- (j) Whether Defendants' conduct was wilful or reckless;
- (k) Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code sections 17200 *et seq.*; and
- (l) The appropriate amount of damages, restitution or monetary penalties resulting from Defendants' violations of California law.

21. There is a well-defined community of interest in the litigation and both the Damages and Penalties Class and the Injunctive Relief class are readily ascertainable and satisfy the requirements of Federal Rules of Civil Procedure, Rule 23(a) as follows:

(a) Numerosity: The Members of the class (and each Subclass, if

any) are so numerous that joinder of all Members would be unfeasible and impractical. The Membership of the entire class is unknown to Plaintiff at this time, however, the class is estimated to be greater than one hundred (100) individuals and the identity of such Membership is readily ascertainable by inspection of Defendants' employment records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class Members' as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately, protect the interests of each Class Member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any Class Member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort and expense as compared with separate lawsuits, and will avoid inconsistent

outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Class actions provide the Class Members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

22. This action is also properly maintainable under Rule 23(c)(4) for all class issues alleged herein.

GENERAL ALLEGATIONS

23. Defendants currently employ Plaintiff as a "Personal Banker," a non-exempt position, at Defendants' Palo Alto, California business location.

24. Defendants continue to employ non-exempt or hourly-paid branch employees within California and within this District.

25. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive at least minimum wages for compensation and that they were

1 not receiving at least minimum wages for compensation.

2 28. Plaintiff is informed and believes, and thereon alleges, that
3 Defendants knew or should have known that Plaintiff and class members were
4 entitled to receive all meal periods or payment of one additional hour of pay at
5 Plaintiff's and class members' regular rate of pay when they did not receive a
6 timely uninterrupted meal period.

7 29. Plaintiff is informed and believes, and thereon alleges, that
8 Defendants knew or should have known that Plaintiff and class members were
9 entitled to receive all rest periods or payment of one additional hour of pay at
10 Plaintiff's and class members' regular rate of pay when a rest period was missed.

11 30. Plaintiff is informed and believes, and thereon alleges, that
12 Defendants knew or should have known that Plaintiff and class members were
13 entitled to receive all the wages owed to them timely during the corresponding
14 pay period.

15 31. Plaintiff is informed and believes, and thereon alleges, that
16 Defendants knew or should have known that Plaintiff and class members were
17 entitled to receive complete and accurate wage statements in accordance with
18 California law.

19 32. Plaintiff is informed and believes, and thereon alleges, that
20 Defendants knew or should have known that Plaintiff and class members were
21 entitled to receive full reimbursement for all business-related expenses and costs
22 they incurred during the course and scope of their employment, and that they did
23 not receive full reimbursement of applicable business-related expenses and costs
24 they incurred.

25 33. Plaintiff is informed and believes, and thereon alleges, that
26 Defendants knew or should have known that Plaintiff and class members were
27 entitled to receive additional compensation for having to work split-shifts, and
28 that they did not receive additional compensation when they were required to

1 work split-shifts.

2 34. Plaintiff is informed and believes, and thereon alleges, that at all
3 times herein mentioned, Defendants knew or should have known that they had a
4 duty to compensate Plaintiff and class members, and that Defendants had the
5 financial ability to pay such compensation, but willfully, knowingly and
6 intentionally failed to do so, and falsely represented to Plaintiff and other class
7 members that they were properly denied wages, all in order to increase
8 Defendants' profits.

9 35. At all times herein set forth, PAGA was applicable to Plaintiff's
10 employment by Defendant.

11 36. At all times herein set forth, PAGA provides that any provision of
12 law under the California Labor Code that provides for a civil penalty to be
13 assessed and collected by the LWDA for violations of the California Labor Code
14 may, as an alternative, be recovered through a civil action brought by an
15 aggrieved employee on behalf of himself and other current or former employees
16 pursuant to procedures outlined in California Labor Code section 2699.3.

17 37. Pursuant to PAGA, a civil action under PAGA may be brought by
18 an "aggrieved employee," who is any person that was employed by the alleged
19 violator and against whom one or more of the alleged violations was committed.

20 38. Plaintiff was employed by Defendants and the alleged violations
21 were committed against her during her time of employment and she is, therefore,
22 an aggrieved employee. Plaintiff and other employees are "aggrieved
23 employees" as defined by California Labor Code section 2699(c) in that they are
24 all current or former employees of Defendant, and one or more of the alleged
25 violations were committed against them.

26 39. Pursuant to California Labor Code sections 2699.3 and 2699.5, an
27 aggrieved employee, including Plaintiff, may pursue a civil action arising under
28 PAGA after the following requirements have been met:

- (a) The aggrieved employee shall give written notice by certified mail (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within thirty (30) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within thirty-three (33) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

40. On February 14, 2011, Plaintiff provided written notice by certified mail to the LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, pursuant to California Labor Code section 2699.3(a). Therefore, as of March 20, 2011, the administrative prerequisites under California Labor Code section 2699.3(a) are satisfied and Plaintiff has authorization to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 204, 226(a), 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2800, and 2802, unless the LWDA provides timely notice of its intent to investigate Plaintiff's Labor Code claims.

1 FIRST CAUSE OF ACTION

2 Violation of California Labor Code §§ 510 and 1198

3 41. Plaintiff incorporates by reference and re-alleges as if fully stated
4 herein the material allegations set out in paragraphs 1 through 40.

5 42. California Labor Code section 1198 and the applicable Industrial
6 Welfare Commission (IWC) Wage Order provide that it is unlawful to employ
7 persons without compensating them at a rate of pay either time-and-one-half or
8 two-times that person's regular rate of pay, depending on the number of hours
9 worked by the person on a daily or weekly basis.

10 43. The applicable IWC Wage Order provides that Defendants are and
11 were required to pay Plaintiff and class members employed by Defendant, and
12 working more than 8 hours in a day or more than 40 hours in a workweek, at the
13 rate of time-and-one-half for all hours worked in excess of 8 hours in a day or
14 more than 40 hours in a workweek.

15 44. The applicable IWC Wage Order further provides that Defendants
16 are and were required to pay Plaintiff and class members employed by
17 Defendant, and working more than 12 hours in a day, overtime compensation at
18 a rate of two times their regular rate of pay.

19 45. California Labor Code section 510 codifies the right to overtime
20 compensation at one-and-one-half times the regular hourly rate for hours worked
21 in excess of 8 hours in a day or 40 hours in a week or for the first 8 hours worked
22 on the seventh day of work, and to overtime compensation at twice the regular
23 hourly rate for hours worked in excess of 12 hours in a day or in excess of
24 8 hours in a day on the seventh day of work.

25 46. During the relevant time period, Plaintiff and class members
26 consistently worked in excess of 8 hours in a day and/or in excess of 40 hours in
27 a week. For example, Plaintiff was required to work after her scheduled shift to
28 help customers and open new customer accounts both at the branch she worked

1 and outside of the branch on the weekends when she was not scheduled to work.
2 Rather than record these hours past her scheduled shift as overtime hours,
3 Defendants did not record these hours and, at most, promised to let her come in
4 late to work or let her leave early from work on occasion in order to avoid
5 paying her overtime. In addition, Defendants required Plaintiff to work off-the-
6 clock during meal periods, thereby making her total hours exceed 8 hours in one
7 day and/or 40 hours in one week. These off-the-clock overtime hours were not
8 recorded nor paid.

9 47. During the relevant time period, Defendants willfully failed to pay
10 all overtime wages owed to Plaintiff and class members including the overtime
11 hours Plaintiff and class members worked off-the-clock.

12 48. Defendants' failure to pay Plaintiff and class members the unpaid
13 balance of overtime compensation, as required by California laws, violates the
14 provisions of California Labor Code sections 510 and 1198, and is therefore
15 unlawful.

16 49. Plaintiff is entitled to and seeks injunctive and declaratory relief in
17 the form of an Order requiring Defendants to record all hours worked and pay all
18 overtime wages due Plaintiff and class members as they become due.

19 50. Pursuant to California Labor Code section 1194, Plaintiff and class
20 members are entitled to and seek to recover their unpaid overtime compensation,
21 as well as interest, costs, and attorneys' fees.

22 51. Plaintiff and class members are entitled to and seek injunctive and
23 declaratory relief in the form of an Order requiring Defendants to pay unpaid
24 overtime wages, interest, costs and attorneys' fees.

25 **SECOND CAUSE OF ACTION**

26 **Violation of California Labor Code §§ 1194, 1197, 1197.1**

27 52. Plaintiff incorporates by reference and re-alleges as if fully stated
28 herein the material allegations set out in paragraphs 1 through 51.

1 53. At all relevant times, California Labor Code sections 1194, 1197
2 and 1197.1 provide that the minimum wage for employees fixed by the Industrial
3 Welfare Commission is the minimum wage to be paid to employees, and the
4 payment of a lesser wage than the minimum so fixed is unlawful.

5 54. During the relevant time period, Defendants regularly failed to pay
6 minimum wage to Plaintiff and class members as required, pursuant to California
7 Labor Code sections 1194, 1197 and 1197.1. As stated above, Defendants
8 required Plaintiff to work off-the-clock both before and after her scheduled shift
9 and during meal periods. To the extent those hours did not exceed eight in one
10 day or forty in one week, Defendants have failed to pay even minimum wages
11 for those off-the-clock hours worked.

12 55. Defendants' failure to pay Plaintiff and class members the minimum
13 wage as required violates California Labor Code sections 1194, 1197, and
14 1197.1.

15 56. Plaintiff is entitled to and seeks injunctive and declaratory relief in
16 the form of an Order requiring Defendants to record all hours worked and pay at
17 least minimum wages for all hours worked as those wages become due.

18 57. Pursuant to those sections, Plaintiff and class members are entitled
19 to recover the unpaid balance of their minimum wage compensation as well as
20 interest, costs, and attorney's fees, and liquidated damages in an amount equal to
21 the wages unlawfully unpaid and interest thereon.

22 58. Pursuant to California Labor Code section 1197.1, Plaintiff and
23 class members are entitled to recover a penalty of one hundred dollars (\$100.00)
24 for the initial failure to timely pay each employee minimum wages, and two
25 hundred fifty dollars (\$250.00) for each subsequent failure to pay each employee
26 minimum wages.

27 59. Pursuant to California Labor Code section 1194.2, Plaintiff and
28 class members are entitled to and seek to recover liquidated damages in an

1 amount equal to the wages unlawfully unpaid and interest thereon.

2 60. Plaintiff and class members are entitled to and seek injunctive and
3 declaratory relief in the form of an Order requiring Defendants to pay all unpaid
4 minimum wages, penalties, attorneys' fees and costs.

5 **THIRD CAUSE OF ACTION**

6 **Violation of California Labor Code § 226(a)**

7 61. Plaintiff incorporates by reference and re-alleges as if fully stated
8 herein the material allegations set out in paragraphs 1 through 60.

9 62. At all material times set forth herein, California Labor Code section
10 226(a) provides that every employer shall furnish each of his or her employees
11 an accurate itemized wage statement in writing showing nine pieces of
12 information, including the total hours worked and the legal name and address of
13 the employer, among other things.

14 63. Defendants have intentionally and willfully failed to provide
15 employees with complete and accurate wage statements. The deficiencies
16 include, among other things, the failure to include the total hours worked by
17 Plaintiff and class members.

18 64. As a result of Defendants' violation of California Labor Code
19 section 226(a), Plaintiff and class members have suffered injury and damage to
20 their statutorily protected rights. In addition, because the total hours Plaintiff
21 worked are not shown, it is more difficult for Plaintiff to determine the total
22 amount of overtime wages that are unpaid.

23 65. Specifically, Plaintiff and class members have been injured by
24 Defendants' intentional violation of California Labor Code section 226(a)
25 because they were denied both their legal right to receive, and their protected
26 interest in receiving, accurate, itemized wage statements under California Labor
27 Code section 226(a).

28 66. Plaintiff and class members are entitled to and seek statutory

1 damages for having their right to a properly itemized wage statement infringed,
2 and for their ability to properly determine whether they have properly been paid
3 and thus prosecute their wage claims pursuant to California Labor Code section
4 226(e).

5 67. Plaintiff and class members are entitled to and seek injunctive relief
6 to ensure compliance with this section, pursuant to California Labor Code
7 section 226(g).

8 **FOURTH CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 2800 and 2802**

10 68. Plaintiff incorporates by reference and re-alleges as if fully stated
11 herein the material allegations set out in paragraphs 1 through 67.

12 69. At all times herein set forth, California Labor Code sections 2800
13 and 2802 provide that an employer must reimburse employees for all necessary
14 expenditures.

15 70. During the relevant time period, Plaintiff incurred necessary
16 business-related expenses and costs that were not fully reimbursed by Defendant.
17 Defendants had, and continue to have, a policy of not reimbursing employees,
18 including Plaintiff, for mileage and cell phone costs necessarily incurred during
19 the performance of their job duties. For example, Plaintiff regularly had to
20 contact and meet clients after her scheduled working hours and on the weekend
21 to sign up prospective account holders. She was never reimbursed for the
22 mileage and cell phone fees she incurred.

23 71. Defendants have intentionally and willfully failed to fully reimburse
24 Plaintiff for necessary business-related expenses and costs. Defendants' conduct
25 violates California Labor Code sections 2800 and 2802.

26 72. Plaintiff and class members are entitled to and seek to recover all
27 expenses and costs incurred in performing their job duties for Defendants.

28 73. Plaintiff is entitled to and seeks injunctive and declaratory relief in

1 the form of an Order requiring Defendants to pay all unreimbursed business-
 2 related expenses incurred by employees during the course and scope of their
 3 employment, plus interest, pursuant to California Labor Code sections 2800 and
 4 2802.

5 **FIFTH CAUSE OF ACTION**

6 **Violation of California Labor Code §§ 1197 and 1198 and California
 7 Code of Regulations, Title 8, Section 11070 Subdivision 4(C)**

8 74. Plaintiff incorporates by reference and re-alleges as if fully stated
 9 herein the material allegations set out in paragraphs 1 through 73.

10 75. At all relevant times, the applicable IWC Wage Order was
 11 applicable to Plaintiff's and class members' employment by Defendants.

12 76. At all relevant times, California Code of Regulations Title 8,
 13 Section 11040 Subdivision 4(C) provides that "[w]hen an employee works a split
 14 shift, one (1) hour's pay at the minimum wage shall be paid in addition to the
 15 minimum wage for that workday, except when the employee resides at the place
 16 of employment."

17 77. California Labor Code section 1198 requires that "... the standard
 18 conditions of labor fixed by the commission shall be the ... standard conditions
 19 of labor for employees. The employment of any employee ... under conditions
 20 of labor prohibited by the order is unlawful."

21 78. At all relevant times, California Labor Code sections 1194, 1197
 22 and 1197.1 provide that the minimum wage for employees fixed by the Industrial
 23 Welfare Commission is the minimum wage to be paid to employees, and the
 24 payment of a lesser wage than the minimum so fixed is unlawful.

25 79. During the relevant time period, Defendants wilfully required
 26 Plaintiff and class members to work split shifts without any additional
 27 compensation. For example, Plaintiff was required to clock out of work and
 28 leave Defendants' premises, only to have to return and clock back in hours later

1 in the same day.

2 80. During the relevant time period, Defendants failed to pay Plaintiff
3 and class members the required additional compensation for working split-shifts.

4 81. Defendants' conduct violates California Code of Regulations Title
5 8, Section 11040 Subdivision 4(C).

6 82. Plaintiff and class members are entitled to and seek to recover all
7 unpaid wages for having to work split-shifts.

8 83. Plaintiff and class members are entitled to and seek injunctive and
9 declaratory relief in the form of an Order requiring Defendants to pay additional
10 compensation when employees work split-shifts.

11 **SIXTH CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 2698, et seq.**

13 **(Against All Defendants)**

14 84. Plaintiffs incorporate by reference and re-allege as if fully stated
15 herein the material allegations set out in paragraphs 1 through 83.

16 85. California Labor Code §§ 2698, et seq. ("PAGA") permits Plaintiff
17 to recover civil penalties for the violation(s) of the Labor Code sections
18 enumerated in Labor Code section 2699.5.

19 86. PAGA provides as follows, "[n]otwithstanding any other provision
20 of law, a plaintiff may as a matter of right amend an existing complaint to add a
21 cause of action arising under this part at any time within 60 days of the time
22 periods specified in this part."

23 87. Defendants' conduct, as alleged herein, violates numerous sections
24 of the California Labor Code including but not limited to the following:

25 (a) Violation of Labor Code sections 510 and 1198 for
26 Defendants' failure to compensate Plaintiff and other
27 aggrieved employees with all required overtime pay as herein
28 alleged;

- 1 (b) Violation of Labor Code sections 1194, 1197, and 1197.1 for
- 2 Defendants' failure to compensate Plaintiff and other
- 3 aggrieved employees for all hours worked with at least
- 4 minimum wages;
- 5 (c) Violation of Labor Code section 226(a) for failing to provide
- 6 wage statements which contain all information required;
- 7 (d) Violation of Labor Code sections 226.7 and 512 for failure to
- 8 provide all meal and rest periods as required, or pay meal and
- 9 rest period premium wages in lieu thereof, as herein alleged;
- 10 (e) Violation of Labor Code sections 1197 and 1198 for failure to
- 11 compensate Plaintiff and other aggrieved employees for
- 12 working split-shifts; and
- 13 (f) Violation of Labor Code section 204 for failure to timely pay
- 14 all wages owed during employment, as herein alleged.

15 88. Pursuant to California Labor Code sections 2699(a), 2699.3, and
 16 2699.5 Plaintiff and all other aggrieved employees are entitled to recover civil
 17 penalties against Defendants, in addition to other remedies, for violations of
 18 California Labor Code sections 204, 226(a), 226.7, 510, 512(a), 1194, 1197,
 19 1197.1 and 1198.

20 **SEVENTH CAUSE OF ACTION**

21 **Violation of California Business & Professions Code §§ 17200, et seq.**

22 89. Plaintiff incorporates by reference and re-alleges as if fully stated
 23 herein the material allegations set out in paragraphs 1 through 88.

24 90. Defendants' conduct, as alleged herein, has been, and continues to
 25 be, unfair, unlawful, and harmful to Plaintiff, other class members, and to the
 26 general public. Plaintiff seeks to enforce important rights affecting the public
 27 interest within the meaning of Code of Civil Procedure section 1021.5.

28 91. Defendants' activities, as alleged herein, are violations of California

1 law, and constitute unlawful business acts and practices in violation of California
2 Business & Professions Code sections 17200, et seq.

3 92. A violation of California Business & Professions Code sections
4 17200, et seq. may be predicated on the violation of any state or federal law.
5 Defendants' policies and practices violate the California Labor Code, the
6 applicable California Industrial Welfare Commission order, and other state and
7 federal wage and hour laws in at least the following respects:

- 8 (a) Requiring non-exempt employees, including Plaintiffs and
9 class members, to work overtime without paying them proper
10 compensation;
- 11 (b) Failing to pay at least minimum wage for all hours worked;
- 12 (c) Requiring non-exempt employees, including Plaintiffs and
13 class members, to work through their meal and rest periods
14 without paying them proper compensation;
- 15 (d) Failing to timely pay wages due Plaintiff and class members
16 during each pay period; and
- 17 (e) Failing to provide wage statements to Plaintiff and class
18 members which are accurate and contain all required
19 information.

20 93. Plaintiff and class members have been personally injured by
21 Defendants' unlawful business acts and practices as alleged herein, including but
22 not necessarily limited to the loss of money or property.

23 94. Pursuant to California Business & Professions Code sections 17200,
24 et seq., Plaintiff and putative class members are entitled to restitution of the
25 wages withheld and retained by Defendants during a period that commences four
26 years prior to the filing of this complaint; a permanent injunction requiring
27 Defendants to pay all outstanding wages due to Plaintiff and class members; an
28 award of attorneys' fees pursuant to California Code of Civil Procedure section

1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants as follows:

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Injunctive Relief Class;
3. That Plaintiff be appointed as the representative of the Damages and Penalties Class;
4. That counsel for Plaintiff be appointed as Class Counsel;

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by wilfully failing to pay all overtime wages due to Plaintiff and class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and
9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197 and 1197.1 by willfully failing to pay minimum wages to Plaintiff and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and class members in the amount as may be established according to proof at trial;

13. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

14. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

15. For liquidated damages pursuant to California Labor Code section 1194.2; and

16. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to pay all business-related expenses owed to Plaintiffs;

18. For unpaid expenses and costs incurred and such general and special damages as may be appropriate;

19. For pre-judgment interest on any unpaid costs and expenses from the date such amounts were due;

20. For all actual, consequential and incidental losses and damages, according to proof; and

21. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

22. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226(a) by wilfully failing to provide accurate and

1 itemized wages statements to Plaintiff and class members;

2 23. Plaintiff and class members are entitled to recover from Defendants
3 the greater of their actual damages caused by Defendants' failure to comply with
4 California Labor Code section 226(a), or an aggregate penalty not exceeding four
5 thousand dollars (\$4,000) per employee.

6 24. Pursuant to California Labor Code section 226(g), Plaintiff and class
7 members are also entitled to injunctive relief to ensure compliance with this
8 section.

9 25. For such other and further relief as the Court may deem equitable
10 and appropriate.

11 As to the Fifth Cause of Action

12 26. That the Court declare, adjudge and decree that Defendants violated
13 California Code of Regulations Title 8, Section 11090 Subdivision 4(C) by
14 willfully failing to pay additional compensation for required split-shifts;

15 27. For general unpaid wages and such general and special damages as
16 may be appropriate;

17 28. For statutory wage penalties pursuant to California Labor Code
18 section 1197.1 for Plaintiff and class members in the amount as may be
19 established according to proof at trial;

20 29. For pre-judgment interest on any unpaid compensation from the date
21 such amounts were due;

22 30. For reasonable attorneys' fees and for costs of suit incurred herein
23 pursuant to California Labor Code section 1194(a);

24 31. For liquidated damages pursuant to California Labor Code section
25 1194.2; and

26 32. For such other and further relief as the Court may deem equitable
27 and appropriate.

As to the Sixth Cause of Action

33. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code sections: 510 and 1198 (by failing to provide Plaintiffs and class members all overtime compensation), sections 1194, 1197, and 1197.1 (by failing to pay at least minimum wages for all hours worked), sections 226.7 and 512 (by failing to provide all meal and rest periods and failing to pay for all missed meal and rest periods), section 226(a) (by failing to provide accurate wage statements), sections 1197 and 1198 (by failing to pay additional compensation for working split-shifts), and section 204 (by failing to pay earned wages during employment).

34. For civil penalties pursuant to California Labor Code sections 2699(a) and 2699(f) and (g), plus costs and attorneys' fees, for violations of California Labor Code sections 204, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1 and 1198; and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200 *et seq.* by failing to provide Plaintiff and class members all overtime compensation due to them, failing to pay at least minimum wages to Plaintiff and class members, failing to pay compensation for split-shifts, failing to provide all meal and rest periods to Plaintiff and class members, failing to pay Plaintiff's and class members' wages timely as required by California Labor Code section 204 and by failing to provide Plaintiff and class members with complete and accurate wage statements.

37. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

1 38. For the appointment of a receiver to receive, manage and distribute
2 any and all funds disgorged from Defendants and determined to have been
3 wrongfully acquired by Defendants as a result of violations of California
4 Business & Professions Code sections 17200 *et seq.*;

5 39. For reasonable attorneys' fees and costs of suit incurred herein
6 pursuant to California Code of Civil Procedure section 1021.5;

7 40. For injunctive relief to ensure compliance with this section, pursuant
8 to California Business & Professions Code sections 17200 *et seq.*; and

9 For such other and further relief as the Court may deem equitable and
10 appropriate.

PRAYER FOR INJUNCTIVE RELIEF

11 41. That the Court declare, adjudge and decree that Defendants violated
12 California Labor Code sections 510 and 1198 and applicable IWC Wage Orders
13 by wilfully failing to pay all overtime wages due to Plaintiff and class members;

14 42. That the Court declare, adjudge and decree that Defendants violated
15 California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to
16 pay minimum wages to Plaintiff and class members;

17 43. That the Court declare, adjudge and decree that Defendants violated
18 California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders
19 by wilfully failing to provide all meal periods to Plaintiff and class members;

20 44. That the Court declare, adjudge and decree that Defendants violated
21 California Labor Code section 226.7 and applicable IWC Wage Orders by
22 wilfully failing to provide all rest periods to Plaintiff and class members;

23 45. That the Court declare, adjudge and decree that Defendants violated
24 California Labor Code section 204 by wilfully failing to pay all compensation
25 owed at the time required by California Labor Code section 204, to Plaintiff and
26 class members;

27 46. That the Court declare, adjudge and decree that Defendants violated

1 California Labor Code sections 2800 and 2802 by wilfully failing to reimburse
2 business-related expenses and costs incurred by Plaintiff and class members;

3 47. That the Court declare, adjudge and decree that Defendants violated
4 the record keeping provisions of California Labor Code section 226(a) and
5 applicable IWC Wage Orders as to Plaintiff and class members, and wilfully
6 failed to provide accurate itemized wage statements thereto;

7 48. That the Court declare, adjudge and decree that Defendants violated
8 California Labor Code sections 1197 and 1198 and applicable IWC Wage Orders
9 by wilfully failing to pay additional compensation to Plaintiff and class members
10 for working split-shifts;

11 49. That the Court declare, adjudge and decree that Defendants violated
12 California Business and Professions Code sections 17200, et seq. by failing to
13 provide Plaintiff and class members all overtime wages and minimum wages due
14 to them, failing to provide all meal and rest periods to Plaintiff and class
15 members, failing to pay for all missed meal and rest periods to Plaintiff and class
16 members, failing to pay Plaintiff and class members' wages timely as required
17 by California Labor Code section 204, failing to reimburse Plaintiff and class
18 members for business-related expenses and costs incurred, and failing to provide
19 Plaintiff and class members minimum properly itemized wage statements as
20 required by California Labor Code section 226(a);

21 50. For a preliminary and permanent injunction restraining Defendants
22 and their agents and employees from continuing to violate the wage and hour
23 laws as alleged herein;

24 51. For a preliminary and permanent injunction mandating that
25 Defendants record all hours worked and pay Plaintiff and class members all
26 required overtime wages in accordance with the law as they become due;

27 52. For a preliminary and permanent injunction mandating that
28 Defendants provide Plaintiff and class members meal breaks as required by law

1 and pay all meal period premiums as they become due;

2 53. An Order compelling Defendants to automatically pay meal period
3 premiums when the time records indicate: (a) meal periods are less than 30
4 consecutive minutes; and (b) meal periods have not started by the fifth hour;

5 54. For a preliminary and permanent injunction mandating that
6 Defendants provide Plaintiff and class members rest breaks as required by law
7 and pay rest period premiums as they become due;

8 55. For a preliminary and permanent injunction mandating that
9 Defendants pay Plaintiff and class members all wages timely during employment
10 in accordance with the law;

11 56. An Order compelling Defendants to modify their existing wage
12 statements to list the total hours worked;

13 57. For a preliminary and permanent injunction mandating that
14 Defendants reimburse Plaintiff and class members for all business-related
15 expenses and costs incurred;

16 58. For a preliminary and permanent injunction mandating that
17 Defendants pay Plaintiff and class members additional compensation for split-
18 shifts;

19 59. For a preliminary and permanent injunction restraining Defendants
20 and its agents and employees from continuing to commit unlawful, unfair and
21 fraudulent business practices in violation of California Business & Professions
22 Code sections 17200 *et seq.*, including from continuing to commit violations of
23 wage and hour laws by use of economic force against Plaintiff and class
24 members;

25 60. For reasonable attorneys' fees; and

26 61. For such further relief as the Court may deem appropriate.

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1 Dated: February 15, 2011

Respectfully submitted,
2 Initiative Legal Group APC

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4 By: 

5 Miriam Schimmel
6 David Cheng

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Attorneys for Plaintiff Angela Garcia